

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WITBECK, INC., and MERIDIAN MUTUAL  
INSURANCE COMPANY,

UNPUBLISHED  
May 26, 2000

Plaintiffs/Counterdefendants,

v

No. 212259  
Oakland Circuit Court  
LC No. 97-550177-NZ

DENISE SIMPSON,

Defendant/Counterplaintiff/Third-Party  
Plaintiff-Appellant,

and

CITY OF FERNDAL and NORMAN  
RAYMOND,

Third-Party Defendants-Appellees.

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Before: Markey, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Third-party plaintiff appeals as of right challenging the circuit court's order granting summary disposition in favor of third-party defendants, Norman Raymond and the City of Ferndale, and also challenging the circuit court's order denying her motion to amend her complaint. We affirm.

The circuit court properly granted third-party defendants' motion for summary disposition. The City of Ferndale is absolutely immune from third-party plaintiff's malicious prosecution claim. MCL 691.1407(1); MSA 3.996(107)(1); *Payton v City of Detroit*, 211 Mich App 375, 392-393; 536 NW2d 233 (1995). Moreover, there is no question of fact that Raymond was acting in the scope of his authority as a police officer while employed by the City of Ferndale, a governmental agency engaged in the exercise or discharge of a governmental function. Neither the allegations in the complaint nor the undisputed deposition testimony indicate that Raymond's actions amounted to gross negligence as defined by MCL 691.1407(2)(c); MSA 3.996(107)(2)(c). Accordingly, third-party defendant

Raymond is immune from tort liability under MCL 691.1407(2); MSA 3.996(107)(2). Summary disposition was therefore proper under MCR 2.116(C)(7).

Next, the circuit court did not abuse its discretion in denying third-party plaintiff's motion to amend her complaint because of undue delay and prejudice to the defense. Third-party plaintiff's failure to timely raise her claim under 42 USC 1983 effectively prevented third-party defendants from defending against that claim without significant additional discovery. Moreover the proposed amendment would be futile. Regardless of the allegations in the complaint, there is no genuine issue of material fact that third-party plaintiff's malicious prosecution claims are barred by governmental immunity. Third-party plaintiff has not alleged or shown "some independent violation of a right protected by the constitution or federal law" and cannot base her § 1983 claim solely on an alleged prosecution without probable cause. *Payton, supra* at 404.

Affirmed.

/s/ Jane E. Markey

/s/ Roman S. Gibbs

/s/ Richard Allen Griffin